

111TH CONGRESS  
2D SESSION

# H. R. 5888

To establish an America Rx program to establish fairer pricing for prescription drugs for individuals without access to prescription drugs at discounted prices.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2010

Mr. MICHAUD (for himself, Ms. PINGREE of Maine, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To establish an America Rx program to establish fairer pricing for prescription drugs for individuals without access to prescription drugs at discounted prices.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “America Rx Act of 2010”.

6 (b) PURPOSE.—The purpose of this Act is to estab-  
7 lish an America Rx program that utilizes manufacturer  
8 rebates and pharmacy discounts to reduce prescription

1 drug prices to those residents who are without access to  
2 discounted prices for outpatient prescription drugs.

3 **SEC. 2. AMERICA RX PROGRAM.**

4 (a) ESTABLISHMENT.—

5 (1) IN GENERAL.—Not later than 1 year after  
6 the date of the enactment of this Act, the Secretary  
7 of Health and Human Services shall establish a pro-  
8 gram (in this section referred to as the “America Rx  
9 program”) consistent with the provisions of this sec-  
10 tion to provide qualified residents with access to dis-  
11 counted prices for outpatient prescription drugs  
12 through rebate agreements that the Secretary has  
13 negotiated with prescription drug manufacturers.

14 (2) OUTREACH.—The Secretary shall provide  
15 for—

16 (A) outreach efforts to build public aware-  
17 ness of the program and maximize enrollment  
18 of qualified residents; and

19 (B) simplified eligibility procedures and  
20 uniform eligibility standards for qualified resi-  
21 dents.

22 (b) REBATE AGREEMENTS WITH MANUFACTUR-  
23 ERS.—

24 (1) IN GENERAL.—Under the America Rx pro-  
25 gram the Secretary shall negotiate with manufactur-

1       ers of outpatient prescription drugs rebate agree-  
2       ments with respect to drugs offered under the pro-  
3       gram to qualified residents.

4           (2) MINIMUM AMOUNT OF REBATES.—In nego-  
5       tiating the amount of such a rebate under paragraph  
6       (1), the Secretary shall take into consideration the  
7       amount of the rebate calculated under the Medicaid  
8       program, the average manufacturer price of pre-  
9       scription drugs, and other information on prescrip-  
10      tion drug prices and price discounts. The Secretary  
11      shall negotiate the amount of such rebates in a man-  
12      ner so that the rebates on average are comparable  
13      to the average percentage rebate obtained in out-  
14      patient prescription drugs provided under section  
15      1927(c) of the Social Security Act (42 U.S.C.  
16      1396r-8(c)).

17          (3) DISCOUNTED PRICES.—The Secretary shall  
18      specify the method for computing and applying such  
19      discounts, including a method for computing and ap-  
20      plying discounts on a uniform, average percentage  
21      basis.

22          (4) PAYMENT.—Rebates under such agreements  
23      shall be payable to the Secretary according to a  
24      schedule (not less often than quarterly) negotiated  
25      with manufacturers and shall be paid, directly or

1 through States, to participating pharmacies that  
2 provide discounts to qualified residents.

3 (5) INCENTIVE.—In order to induce manufac-  
4 turers of outpatient prescription drugs to enter into  
5 such rebate agreements to carry out the purpose de-  
6 scribed in section 1(b), the Secretary shall provide,  
7 in the case of a manufacturer that has not entered  
8 into such an agreement, for a denial of a deduction  
9 under chapter 1 of the Internal Revenue Code of  
10 1986 for the amount of expenses of the manufac-  
11 turer for advertising and marketing of drugs of the  
12 manufacturer, other than expenses for free samples  
13 of drugs subject to section 503(b)(1) of the Federal  
14 Food Drug, and Cosmetic Act intended to be distrib-  
15 uted to patients.

16 (6) APPLICATION OF REBATES.—Amounts re-  
17 ceived by the Secretary as rebates under this sub-  
18 section shall be placed into an appropriate account  
19 in the Treasury and shall be available in advance of  
20 appropriations to the Secretary for the payment of  
21 discounts and other costs of participating phar-  
22 macies in carrying out the America Rx program and  
23 for the payment of administrative costs in carrying  
24 out the program. Under the America Rx program,  
25 participating pharmacies shall be ensured reasonable

1 and timely payment of discounts they provide to  
2 qualified residents under the program.

3 (c) ROLE OF STATES IN ADMINISTERING PRO-  
4 GRAM.—

5 (1) IN GENERAL.—Under the America Rx pro-  
6 gram the Secretary may enter into appropriate ar-  
7 rangements with States under which States provide  
8 for the administration of the program in return for  
9 payment of the reasonable administrative expenses  
10 associated with such administration.

11 (2) ADMINISTRATIVE FUNCTIONS.—Such ad-  
12 ministration functions may include—

13 (A) determinations of eligibility of qualified  
14 residents;

15 (B) arrangements with participating phar-  
16 macies; and

17 (C) such other functions as the Secretary  
18 determines appropriate.

19 (3) CONTRACTUAL AUTHORITY.—In carrying  
20 out responsibilities under this section, the Secretary  
21 and States may enter into agreements with phar-  
22 macy benefit managers and other third parties.

23 (d) PROGRAM ELIGIBILITY.—

1 (1) QUALIFIED RESIDENT DEFINED.—For pur-  
2 poses of this section, the term “qualified resident”  
3 means an individual who—

4 (A) is a citizen or national of the United  
5 States or is lawfully present in the United  
6 States (as determined in accordance with sec-  
7 tion 1411 of the Patient Protection and Afford-  
8 able Care Act); and

9 (B) as determined under regulations of the  
10 Secretary, is not covered under any public or  
11 private program that provides substantial bene-  
12 fits (which may be discounted prices) towards  
13 the purchase of outpatient prescription drugs.

14 (2) SCREENING.—

15 (A) FOR OTHER GOVERNMENTAL PRO-  
16 GRAMS.—Individuals who apply for benefits  
17 under the America Rx program shall be  
18 screened for eligibility under the Medicaid pro-  
19 gram and other applicable Governmental health  
20 care programs and, if found eligible, shall be  
21 enrolled in such program or programs.

22 (B) SCREENING BY HEALTH INSURANCE  
23 EXCHANGES.—In the case of individuals enroll-  
24 ing in a qualified health plan through a Health  
25 Insurance Exchange under title I of the Patient

1           Protection and Affordable Care Act, the Ex-  
2           change shall provide (at the time of enrollment)  
3           for a screening of the individual to determine if  
4           the individual is a qualified resident for pur-  
5           poses of the America Rx program.

6           (3) RELATION TO OTHER COVERAGE.—In order  
7           not to discourage employers and health insurance  
8           issuers from providing comprehensive prescription  
9           drug coverage through a group health plan or health  
10          insurance coverage, no such employer or issuer may  
11          participate in a Health Insurance Exchange if the  
12          Secretary determines that the prescription drug ben-  
13          efits under the plan or coverage have been reduced  
14          as a result of the America Rx program.

15          (4) PROTECTION OF THE LOW INCOME.—Noth-  
16          ing in this section shall be construed as reducing the  
17          prescription drug benefits available to low-income in-  
18          dividuals, as well as senior citizens and the disabled,  
19          under the Medicare or Medicaid programs as a re-  
20          sult of the implementation of the America Rx pro-  
21          gram.

22          (e) ARRANGEMENTS WITH PARTICIPATING PHAR-  
23          MACIES.—

24                (1) IN GENERAL.—Under the America Rx pro-  
25          gram arrangements are made with pharmacies for

1 the provision of prescription drugs at discounted  
2 prices to qualified residents in a reasonably acces-  
3 sible manner. Such arrangements shall provide  
4 that—

5 (A) each participating pharmacy shall—

6 (i) provide discounts on prices for out-  
7 patient prescription drugs for qualified  
8 residents in return for prompt reimburse-  
9 ment of the amount of such discounts and  
10 a reasonable dispensing fee;

11 (ii) not charge qualified residents  
12 more (before such discounts) for outpatient  
13 prescription drugs than the amount that  
14 individuals who are not qualified residents  
15 are charged for such drugs; and

16 (iii) report to the Secretary (or the  
17 Secretary's designee) information regard-  
18 ing the discounts provided and fees in-  
19 curred; and

20 (B) the program shall—

21 (i) ensure the reasonable and timely  
22 payment to a participating retail pharmacy  
23 on a prompt basis (no less promptly than  
24 as provided under the Medicare program)  
25 for discounted prices provided to qualified



1 residents under the program and for rea-  
2 sonable dispensing fees; and

3 (ii) not impose any additional fees on  
4 such pharmacies in connection with partici-  
5 pation in the program.

6 (2) DISCOUNTED PRICES.—The amount of the  
7 discount provided to enrolled qualifying residents  
8 shall reflect the amount of rebates obtained, reduced  
9 by expenses relating to administrative costs of the  
10 Federal and State governments and of participating  
11 pharmacies.

12 (f) DEFINITIONS.—For purposes of this section:

13 (1) The term “Health Insurance Exchange”  
14 means such an Exchange as established and oper-  
15 ated under part 3 of subtitle D of title I of the Pa-  
16 tient Protection and Affordable Care Act.

17 (2) The term “manufacturer” has the meaning  
18 given such term in section 1927(k)(5) of the Social  
19 Security Act (42 U.S.C. 1396r–8(k)(5)).

20 (3) The term “Medicaid program” means a  
21 State program under title XIX of the Social Security  
22 Act, including such a program operating under a  
23 Statewide waiver under section 1115 of such Act.

24 (4) The term “outpatient prescription drug”  
25 has the meaning given the term “covered outpatient

1 drug” in section 1927(k)(2) of the Social Security  
2 Act (42 U.S.C. 1396r–8(k)(2)).

3 (5) The term “Secretary” means the Secretary  
4 of Health and Human Services.

5 (6) The term “State” has the meaning given  
6 such term for purposes of title XIX of the Social Se-  
7 curity Act.

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